## COMMONWEALTH OF MASSACHSETTS CIVIL SERVICE COMMISSION

SUFFOLK, SS.	
Michael Rivers, Appellant	D-03-395
V.	
Town of Williamstown	
Respondent	
Appellant's Attorney:	Pro Se
	241 Cross Road Clarksburg, MA 01247
Respondent's Attorney:	Maria C. Rota, Esq.
	Kopelman and Paige, P.C.
	31 State James Avenue
	Boston, MA 02116-4102
Commissioner:	John E. Taylor

## **DECISION**

Pursuant to the provisions of Massachusetts General Law c. 31, §43, the Appellant, Michael Rivers (hereinafter "Appellant" or "Mr. Rivers"), is appealing the

actions of the Respondent, Town of Williamstown (hereinafter "Respondent"), for terminating him for violations of the following rules from the <u>Manual of Rules and Regulation for the Government of the Police Department of the Town of Williamstown Massachusetts</u> (hereinafter "<u>The Manual</u>") Rule 4.02 (Conduct Unbecoming a Police Officer): 10.1 (Professional Image), and 14.7 (Off Duty Use of Alcohol).

Two tapes were made of the hearing. The Appellant appeared pro se and Attorney Maria C. Rota appeared on behalf of the Respondent. As no notice was received from either party, the hearing was declared private.

The Appellant filed a timely appeal. A Pre-Hearing Conference was held March 3, 2004. The Full Hearing was held on June 15, 2005 at 9:30 AM before Commissioner John E. Taylor.

At the Full Hearing, Commissioner Taylor informed the pro se Appellant of the procedure of a Full Hearing, informing the Appellant he could make an opening statement, enter evidence into the record, call witnesses for examination, cross-examine the witnesses called by the Respondent, and make a closing argument. During the Full Hearing, the Appellant participated in making an opening and closing arguments. The Appellant did not call any witnesses, but he did cross-examine the Respondent's witnesses. The Appellant did attempt to submit a confidential document into evidence, a document placed by mistake in his personnel file that related to a private conversation between the Town Counsel of Williamstown and Town of Williamstown. Commissioner Taylor deemed the document inadmissible, protected by the Attorney-Client Privilege. As a result, the Appellant did not enter any documents into evidence.

During his cross-examination of Town of Carver Chief of Police Arthur A. Parker, Jr., the Appellant stated he found out after calling the Commission on Friday, June 10, 2005, that he had a Full Hearing scheduled on Wednesday, June 15, 2005, and the Notice of the Full Hearing was sent to the wrong person. The Appellant, present at the Full Hearing, did not ask for a Continuance or claim any harm as a result of his lack of notice.

After Closing Statements were made by the Parties, Commissioner Taylor requested that the Parties each file a Proposed Decision and Post-Hearing Memorandum with the Commission. Commissioner Taylor explained to the Appellant in detail what a

Proposed Decision and Post-Hearing Memorandum would look like. The Commissioner also suggested the Appellant find help in preparation of the Memorandum and Proposed Decision. In order to give the Appellant ample opportunity to participate, the Commissioner extended the briefs' due date to 45 days. On August 3, 2005, the Respondent filed a Proposed Decision and a Post-Hearing Memorandum. The Appellant did not file either a Proposed Decision or a Post-Hearing Memorandum and did not request an extension of time.

## FINDINGS OF FACT

Based upon the 11 items entered into evidence, all submitted by the Respondent (Exhibits 1-11), the testimony of the unsequestered witnesses Town of Carver Chief of Police Arthur A. Parker, Jr., Town of Williamstown Chief of Police Kyle J. Johnson, Paramedic John P. Meaney, Jr. (subpoenaed), Patrolman Christopher Whitney, Hathia Girard (subpoenaed), and Kenneth Reynolds, Jr. (subpoenaed), I make the following findings of fact:

- 1) The Appellant was a tenured civil service employee, in the position of police officer for the Town of Williamstown at time of the alleged incident involved in this case, September 20, 2003, for which he was terminated.
- 2) The Appellant has been employed by the Respondent since July 2, 2001 and has signed an Acknowledgment of Receipt that he received the updated version of <a href="The Manual">The Manual</a> on July 2, 2002 that states the Policies and Procedures of the Williamstown Police Department. (Exhibit 6; Exhibit 7).
- 3) The Appellant has 2 alcohol-related disciplinary matters on his employment at the Williamstown Police Department. On November 3, 2001, the Appellant received a 5-day suspension without pay for an incident where the Appellant was "extremely intoxicated" at a private Clarksburg Fire Department function in Clarksburg, MA, where the Appellant had verbal altercations with other people at the function, including the Fire Chief of the Clarksburg Fire Department. The

- Appointing Authority suggested the Appellant contact the Employee Assistance Program. (Exhibit 8).
- 4) Town of Carver Chief of Police Arthur A. Parker, Jr., seemed credible because he was well spoken and had a no-nonsense demeanor. In addition, Chief Parker has spent over 30 years in law enforcement. Parker testified the Appellant's behavior at the Clarksburg Fire Department function on November 3, 2001 was embarrassing to the Williamstown Police Department, especially because the Appellant spoke out against the Fire Chief and the State Police were called to ask the Appellant to leave. Chief Parker recommended that the Appellant seek help from the Employee Assistance Program, but the Appellant did not think he had a problem with alcohol and did not seek assistance. The Respondent did not terminate the Appellant after this November 3, 2001 incident because the Respondent wanted to give him a "break" so that the Appellant could learn his lesson. (Testimony of Chief Parker; Exhibit 8).
- 5) On June 10, 2002, the Appellant was involved in an altercation at the Key West Bar in North Adams, MA, where the Appellant had been drinking with other police officers. Within the Key West Bar, the Appellant was engaging in verbal and physical horseplay with his acquaintances. Later in the night at the Key West Bar's parking lot, the Appellant became embroiled in a verbal altercation with several patrons and used a racial epithet referring to the wife of one of the patrons. Shortly thereafter, the woman's husband threatened the Appellant and the Appellant said that he saw the husband had a gun near him in his car. (Exhibit 9; Testimony of Chief Parker).
- 6) After the Key West Bar incident, the Appointing Authority extended the Appellant's probation "for one full year from the date of [his] original full time appointment plus any suspension period received during the past year." In addition, the Appellant was requested to contact the Employee Assistance Program and "undergo an assessment to determine if [the Appellant's] use of

- alcohol may cause a negative relationship in your ability and fitness to perform the duties of a police officer and conform your behavior within department standards." (Exhibit 9).
- 7) Chief Parker testified that the Appellant's actions at the Key West Bar incident on June 10, 2002 caused embarrassment to the Williamstown Police Department. Chief Parker testified he thought the Key West Bar incident demonstrated the Appellant had a problem with alcohol abuse. Sometime after the June 10, 2002 incident, the Appellant met with the Employee Assistance Program and consulted a Health Care professional at the Employee Assistance Program, who felt that there was no need for the Appellant to come in again. (Testimony of Chief Parker; Exhibit 9).
- 8) On October 3, 2003, the Appellant was charged by written notice with the violation of the Rule 4.02 (Conduct Unbecoming a Police Officer), 10.1 (Professional Image), and 14.7 (Off Duty Use of Alcohol) listed in <u>The Manual</u>, in connection with an altercation that took place at Altiere's Lounge (hereinafter "Altiere's") in North Adams, MA on September 20, 2003. (Exhibit 11; Testimony of Chief Arthur Parker).
- 9) After a Hearing before the Appointing Authority on October 9, 2003 the Appellant was terminated by written notice on October 14, 2003. (Exhibit 11).
- 10) The Appellant arrived at Altiere's Bar around 12:15 AM on September 20, 2003. After he arrived at the bar before 1:00 AM, he drank at least four bottles of beer. (Exhibit 3; Statement of Michael Rivers; Testimony of Hiatha Girard).
- 11) Hathia Girard, the girlfriend of Kenneth Reynolds, testified she saw the Appellant drink several shots of hard alcohol at Altiere's. Ms. Girard was a reluctant witness and it was apparent by her body language she was uncomfortable to appear before the Commission. However, it seemed she was credible in her

testimony and confirmed assertions made in her Witness Incident Report filed with the North Adams Police Department. Ms. Girard affirmed she knew the Appellant because he was a frequent guest at the restaurant where she worked as a waitress. (Testimony of Ms. Girard; Exhibit 1).

- 12) Ms. Girard testified the interactions between the Appellant and her boyfriend at the time (Kenneth Reynolds) started as joking around and horseplay. Ms. Girard testified the Appellant made comments about the small stature of her boyfriend. The Appellant knocked the hat off Mr. Reynolds's head and a shoving match ensued where the Appellant shoved Mr. Reynolds against the wall. Ms. Girard said the scuffle lasted around ten minutes. (Testimony of Ms. Girard; Exhibit 1)
- 13) Ms. Girard stated at one point she tried to break up the scuffle between Reynolds and Appellant. The Appellant asserts Ms. Girard put her hands around his neck. It is more probable that Ms. Girard did not put her hands around the Appellant's neck considering her small size. (Testimony of Ms. Girard; Statement of the Appellant).
- 14) During the scuffle, the Appellant was struck in the face with a beer bottle. (Exhibit 3).
- 15) At the Commission hearing, Kenneth Reynolds asserted his 5<sup>th</sup> amendment rights after being sworn in due to pending criminal charges filed against him by the Appellant. Mr. Reynolds seemed credible, although reluctant, when he asserted the Appellant was "a decent friend" at the time of the incident. Mr. Reynolds also said the Appellant was intoxicated at the time of the incident. (Testimony of Kenneth Reynolds; Exhibit 2).
- 16) In a written Confidential Witness Statement filed after the incident, Mr. Reynolds indicated he "pushed away with the beer bottle in my hand... broke when it hit his face." (Exhibit 2).

- 17) John Meaney, a paramedic employed by North Adams Ambulance, was dispatched to Altiere's to provide emergency medical care the night of the incident. Mr. Meaney was a credible witness because he made good eye contact and seemed confident. Mr. Meaney testified he waited for police to arrive because the parking lot at Altiere's looked busy and unsafe. Mr. Meaney testified he knew Appellant from working with him in prior accident scenes in Williamstown. Mr. Meaney testified the Appellant "definitely" appeared intoxicated the night of the incident. Mr. Meaney treated the Appellant for wound injuries of the cheek and ear inflicted by a beer bottle. Mr. Meaney stated the Appellant was cooperative while in his care. (Testimony of Mr. Meaney).
- 18) Police Officer Whitney of the North Adams Police Department responded to the scene and was assigned to conduct an investigation into the incident. Officer Whitney's testimony seemed credible because his demeanor seemed honest and his statements went along with evidence in the record. At the time of the incident, Whitney and Appellant were assigned to a regional tactical unit and had trained and worked closely together in the past. At the time of the incident, the Appellant and Officer Whitney were friends. (Testimony of Officer Whitney; Exhibit 10).
- 19) Whitney testified that he has known Appellant socially and professionally for a number of years and had observed Appellant's behavior in the past when he was sober and when he was intoxicated. Based on his observations at the incident, Whitney believed that Appellant was intoxicated to the point where he would not have allowed him to operate a motor vehicle. When questioning the Appellant at the scene on the incident, the Appellant did not want to tell Whitney how much alcohol he consumed or his whereabouts previous to Altiere's. (Testimony of Officer Whitney; Exhibit 10).

- 20) It is believable that the Appellant did not want to talk to Officer Whitney because he was in the process of obtaining medical attention. (Statement of the Appellant; Testimony of Officer Whitney; Exhibit 10).
- 21) Town of Williamstown Chief of Police Kyle J. Johnston seemed like a credible witness because he was well-spoken and well-informed about the situation. At the time of the incident, Chief Johnston was a Sergeant who reported the incident to the then Chief of Police Carter the day after the incident. In his incident report, Chief Johnston testified no alcohol testing was done at the time of the incident to indicate the Appellant's level of toxicity. Chief Johnston testified that the Appellant was not scheduled to work for 22 hours after the incident happened. (Testimony of Chief Johnston; Exhibit 4).
- 22) The Manual Rule 4.02: Conduct Unbecoming an Officer states, "Officers shall not commit any specific acts or acts of immoral, improper, unlawful, disorderly or intemperate conduct, whether on or off duty, which reflect(s) discredit or reflect(s) unfavorably upon the officer, upon other officers or upon the police department. Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and its members. Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members. Conduct unbecoming an officer shall also include off-duty conduct where there is a nexus or connection between the act or acts committed by the officer and that individual's continued fitness or ability to effectively perform his or her required duties and responsibilities and/or the impact or adverse effect said conduct may have on the operations, morale, integrity, reputation or effectiveness of the department and the ability of the officers not involved in said act to effectively perform their required duties and responsibilities" (Exhibit 5).

- 23) The Manual Rule 10.1: Professional Image states, "Officers shall not act in a manner which is inconsistent with the image of a professional officer, which shall include but not necessarily be limited to: a. smoking or chewing gum or tobacco in uniform when in plain view of the public; b. loitering or otherwise "hanging around" a business, residence or other location longer than is reasonably required for an officer's police purposes; and c. gambling, except when off-duty and at licensed premises, or in the performance of their official duty or while authorized or ordered to do so by a superior officer." (Exhibit 10).
- 24) The Manual Rule 14.7: Off Duty Use of Alcohol states, "Officers shall not use alcoholic beverages off duty to the extent that their conduct is obnoxious or offensive and discredits them or the department. Officers shall not consume alcoholic beverages or medication off duty to the extent that they are unfit to report for their next regularly scheduled tour of duty." (Exhibit 10).

## **CONCLUSION**

The issue in this case is whether the Appointing Authority had just cause to terminate Appellant from his position as a Police Officer for violations of <u>The Manual</u> Rule 4.02 (Conduct Unbecoming a Police Officer), 10.1 (Professional Image), and 14.7 (Off Duty Use of Alcohol).

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). The issue to determine in this case therefore is whether the Respondent, at the time of the hearing, had reasonable justification for dismissing the Appellant. See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003).

The term "just cause" has been interpreted to mean "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). For a police officer, a lack of public confidence in the officer and the department he serves can create this impairment. A police officer, by accepting appointment as such, implicitly agrees to not engage in conduct "which calls into question their ability and fitness to perform their original responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986). Broderick v. Police Commissioner of Boston, 368 Mass. 33, 39 (1975). This agreement extends beyond the scope of conduct on duty to any matter that could call an officer's fitness into question. Broderick at 39.

Furthermore, it is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness' testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass. 154, 165 (1995).

In this case, the credibility of the witnesses helped shape the facts that are at issue: the Appellant seemed evasive and not credible; Town of Carver Chief of Police Arthur A. Parker, Jr. seemed credible because he was well spoken, had a no-nonsense demeanor, and spent over 30 years in law enforcement; Town of Williamstown Chief of Police Kyle J. Johnson seemed like a credible witness because he was well-spoken and well-informed about the situation; Paramedic John P. Meaney, Jr. seemed to be a credible witness because he made good eye contact and seemed confident; Patrolman Christopher Whitney seemed credible because his demeanor seemed honest and his statements went along with evidence in the record; Hathia Girard was a reluctant witness and it was apparent by her body language she was uncomfortable to appear before the Commission, nonetheless she seemed credible in her testimony; and Kenneth Reynolds, Jr. asserted his

5<sup>th</sup> amendment rights and was reluctant to answer, however seemed credible in the limited amount of testimony he gave at the Full Hearing.

There can be little doubt that the Appellant's substantial misconduct adversely affected the public interest in this case. The night of the incident, the Appellant, who was not on duty, bullied a friend Kenneth Reynolds, Jr., while under the influence of alcohol. The Appellant and witnesses attest that the Appellant was drinking.

The Appellant engaged in escalating conduct with Mr. Reynolds that led to a pushing match. At first, the escalating conduct included physical horseplay and strong language. It appears that the Appellant, who was of much larger stature than Mr. Reynolds, pushed Mr. Reynolds so hard that he hit the ground. It appeared through testimony and witness reports, that the Appellant was more of the aggressor in the situation. Nevertheless, the Appellant had the duty as a police officer to diffuse the situation; instead he made a choice to continue in the pushing match with a member of the public. The Appellant claimed he was the victim in this situation because he had been hit with a beer bottle. However, the Appellant did not submit any credible evidence to undermine the allegation concerning of his misconduct immediately before he was struck in the head.

It is not the job of the Civil Service Commission to assess if the Appellant has a problem with alcohol, because notwithstanding alcoholism, alcohol abuse, or alcohol use, an individual is obliged to conduct him- or herself in an appropriate manner that exhibits a clear understanding of the difference between right and wrong. McGuire v. Newton Police Officer, D-4745. In McGuire, a police officer's alcoholism was not a defense to his actions when he stole police property, an action that adversely affected the public trust and confidence and was just cause for his termination.

In this case, the Respondent's decision to terminate the Appellant was strengthened by the Appellant's prior misconduct while under the influence of alcohol. Previous to the incident at issue in this case, the Appellant had been suspended for 5 days after a drunken bout at the Clarksburg Fire Department function with the Fire Chief,

where State Police were called in so that the Appellant would leave. While on probation for the Clarksburg Fire Department incident, the Appellant engaged in a heated argument while he was under the influence at the Key West Bar with a patron. In this argument, the Appellant used a racial epithet when referring to a patron's wife.

The Respondent made considerable efforts to give the Appellant a second chance, such as recommending the Appellant an opportunity to obtain assistance from the Employee Assistance Program. The Appellant was well-advised of the requirements of the The Manual, having been provided a copy by the Respondent. His protestations about its applications to his misconduct notwithstanding, he was bound by it and failed to uphold it.

By a preponderance of the evidence, the Respondent has provided just cause for its decision that the Appellant's actions warranted termination. Given the Appellant's actions at the Altiere's Bar, his disciplinary history relating to his actions while under the influence of alcohol, and his lack of interest in participating with the Employee Assistance Program, the Appointing Authority had little choice in this matter. The appeal numbered D-02-395 is *dismissed*.

Civil Service Commission

John E. Taylor Commissioner

By a vote of the Civil Service Commission (Goldblatt, Chairman, Bowman, Guerin, Marquis, Taylor, Commissioners) on December 7, 2006.

A True Record. Attest:

Commissioner

Either Party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30a, §14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, §44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior

court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice sent to:

Michael Rivers Maria C. Rota, Esq.